SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1903.

No. 565.

PLYMOUTH CORDAGE COMPANY ET AL.,

vs.

J. A. SMITH ET AL.

MOTION TO ADVANCE CERTIFICATE AND TAKE THE SAME AS SUBMITTED.

Now on this day come the petitioners herein and move the Court to advance the certificate on the docket, and to take the same as submitted, and for grounds of such motion, allege and say:

This is a question of jurisdiction certified by the United States Circuit Court of Appeals for the Eighth Circuit, arising under the provisions of the National Bankruptcy law. That law (3 U. S. Comp. Stat., pp. 3418 *et seq.*; 30 Stat. 544 *et seq.*) provides two methods of reviewing a proceeding in an appellate court. In Section 25 (p. 3432) it is provided that an appeal may be taken in the following cases:

(*a*) From a judgment adjudging or refusing to adjudge the defendant a bankrupt;

(*b*) From a judgment granting or denying a discharge;

(*c*) From a judgment allowing or rejecting a debt or claim of $500 or over.

From this it will be seen the scope of an appeal is quite limited.

As appears from the appendix to this motion, a number of questions have arisen in bankruptcy proceedings which do not fall within the class of appealable orders and these can only be reviewed under Section 24. In Section 24*b* it is provided "the several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction."

From this reference to the law it will be observed that in Section 25 an appeal is provided in a certain class of cases, and that this class of cases is quite limited in its operation, and that under Section 24, every other question arising in a proceeding in bankruptcy may be revised "on due notice and petition by any party aggrieved."

Referring to Section 25, it will be noted that an appeal may be taken from "the courts of bankruptcy to the circuit courts of appeals of the United States and to the supreme courts of the territories." (P. 3432.)

In Section 1 of the law (p. 3419) it is provided: "Courts of bankruptcy shall include the district courts * * * of the territories." So a district court of a territory is a "court of bankruptcy" within the meaning of the law, and an appeal may be taken from a district court of a territory to the supreme court of a territory in the class of cases provided in Section 25.

Referring to Section 24*b* however, it will be observed the power to revise in matter of law by petition is limited by the language of the act to "the several circuit courts of appeal."

The supreme court of Oklahoma has decided (*in re* Stumpf, 60 Pac. 96; 9 Oklahoma, 639) the power to revise in matter of law by petition is vested entirely in the circuit court of appeals, and is not vested in the supreme court of Oklahoma. The court quoted Sections 24 and 25 of the bankrupt law, and then continues: "Subdivision (*b*) of Section 24 of the bankruptcy law applies only to circuit courts of appeals, and has no application whatever to the supreme courts of a territory. By it, circuit courts of appeals are given the right to superintend and revise in matter of law, the proceedings of the several inferior courts within their respective jurisdictions, but this provision is confined to the circuit courts of appeals."

This decision, it will be noted, was rendered February 8, 1900. (60 Pac. 96.)

Afterward, on January 14, 1901, the circuit court of appeals for the eighth circuit, decided *in re* Blair, 106 Fed. 662. In that case, the petitioners sought to revise in matter of law, the proceedings of a United States court in the Indian Territory. The circuit court of appeals called attention to the fact that "the Indian Territory is not mentioned among the territories assigned to the eighth judicial circuit." (106 Fed. 664.) Accordingly it was held the circuit court of appeals had no jurisdiction to revise in matter of law, the action of a United States court in the Indian Territory.

But *in re* Blair, *supra*, the circuit court of appeals called attention to the fact, that under Section 24*a* "the supreme courts of the territories * * * are invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases." (3 U. S. Comp. Stat., pp., 3431, 3432.) The court concluded its opinion with this language: "A petition to revise proceedings in bankruptcy, being, as we have shown, in its very nature an appellate proceeding, the provision of Section 24, which invests the 'supreme courts of the territories with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases' is adequate to invest the supreme courts of the territories with the superintending and revisory jurisdiction spoken of in subdivision (*b*)." (106 Fed., 166.)

So that *in re* Stumpf, *supra*, the Supreme Court of Oklahoma ruled it did not have jurisdiction of a petition to revise in matter of law the action of a district court of a territory in bankruptcy, and that such jurisdiction did vest in the Circuit Court of Appeals.

On the other hand, *in re* Blair, *supra*, the Circuit Court of Appeals ruled it did not have jurisdiction of a petition to revise in matter of law a ruling of a district court of the territory of Oklahoma in bankruptcy, but that such jurisdiction did vest in the Supreme Court of the Territory of Oklahoma.

In other words, the Supreme Court of Oklahoma and the Circuit Court of Appeals for the Eighth Circuit, reached directly opposite conclusions; neither cited the other, nor yielded its views to that of the other.

In this state of the law on March 23, April 6 and April 14, 1903,

certain proceedings were had in the district court of Kingfisher County, Oklahoma, in the matter of J. A. Smith, bankrupt. (Record p. 2.)

For the information of the court it may be stated a petition to revise in matter of law the proceedings of the district court of Kingfisher County, Oklahoma, was filed in the Supreme Court of Oklahoma, and also in the Circuit Court of Appeals for the Eighth Circuit.

In the Supreme Court of Oklahoma, the respondents moved to dismiss the petition to revise upon the authority of *in re* Stumpf, *supra*. In the Circuit Court of Appeals, respondents moved to dismiss the petition to revise upon the authority of *in re* Blair, *supra*.

Accordingly the Circuit Court of Appeals for the Eighth Circuit certified the question of jurisdiction to this court, and the Supreme Court of Oklahoma continued the case under advisement until the June term, 1904, of that court.

At the outset it may be premised, it is important the construction of the bankruptcy law shall be uniform in its operation. It is provided in the Constitution (Art. 1, Sec. 8): "The Congress shall have power * * * to establish * * * *uniform laws* on the subject of bankruptcy throughout the United States." The title of the bankruptcy law is "An act to establish a *uniform system* of bankruptcy throughout the United States," (30 Stat. 544; 3 U. S. Comp. Stat. p. 3418).

It was also the intention of Congress, in enacting the national bankruptcy law, to provide a speedy, and in some respects, a summary proceeding for the liquidation of the assets of an insolvent debtor. The controlling idea of the bankruptcy laws of 1898 was two fold, one to grant an honest insolvent a discharge from his obligations, and second, to divide his assets among his creditors.

In the amendatory act of February 5, 1903 (Stat. 797; U. S. Comp. Stat., 1901, p. 409), Congress amended Section 18*a* and 18*b* of the law, so as to shorten the time for the publication of a notice from six weeks to two weeks, and also shortened the time for pleading from ten days after the return day to five days after the return day. These amendments indicate the intention of Congress that proceedings in bankruptcy shall be conducted with expedition and despatch.

The importance of the question is disclosed by an inspection of

the report of bankruptcy matters made to the Department of Justice on November 20, 1903, by Edwin C. Brandenburg, in charge of bankruptcy matters. From this report, it appears that in those portions of the United States not within an organized state, the following number of proceedings in bankruptcy have been had since the enactment of the law in 1898:

Alaska, 23; Arizona, 68; District of Columbia, 312; Hawaii, 51; Indian Territory, 441; Oklahoma, 269; New Mexico, 65; Porto Rico, 19.

As appears from the Appendix, the variety of questions arising under the bankrupt law which can only be reviewed by a petition to revise, is very great. Hence it is important to the profession and to the judiciary, that the question of jurisdiction, with respect to revising in matter of law, the proceedings of district courts of the United States, sitting within a jurisdiction not a part of an organized state should be determined authoritatively by the court of last resort, and at the earliest possible moment.

So far as the petitioners are concerned, they are content to submit the question to the court upon printed briefs herewith filed.

So far as the respondents are concerned, notice of the filing of this motion has been given, and also copy of the brief has been served. It appears from the affidavit herewith submitted and made a part of this motion, that respondents have declined in any way to take any part in the question certified to the Supreme Court of the United States, and hence it may be assumed they have no desire to argue the question orally.

All of which is respectfully submitted,

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EDWIN A. KRAUTHOFF,
For the Motion to Advance.

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of Counsel.

APPENDIX.

The following questions arising under the bankrupt law have been presented to the Circuit Court of Appeals on petitions to revise in matter of law:

(*a*) Original petition dismissed by district court, and thereafter other creditors intervene and ask the petition be reinstated and they be permitted to join therein (112 Fed. 966).

(*b*) Priority of payment of certain claims (91 Fed. 96).

(*c*) Validity of assignment for the benefit of creditors (92 Fed. 325).

(*d*) Power of a district court to summarily take possession of property in the hands of an assignee of creditors (93 Fed. 767).

(*e*) Dispute between sheriff and trustee in bankruptcy as to possession of property (94 Fed. 793).

(*f*) Punishment of a party for refusal to comply with an order directing him to pay over money (100 Fed. 562).

(*g*) Right of a creditor to a lien on certain property (101 Fed. 699).

(*h*) Sustaining a demurrer to a petition for the purpose of vacating an adjudication (113 Fed. 911).

(*i*) Decision of a district court on a petition claiming an ownership of funds in the hands of a trustee in bankruptcy (113 Fed. 202).

(*j*) Action of creditors with respect to the choice of a trustee (125 Fed. 226).

(*k*) Action of a district court with respect to homestead exemptions (125 Fed. 913).